

Federal Court



Cour fédérale

Date: 20240322

Docket: T-1282-23

Citation: 2024 FC 455

Ottawa, Ontario, March 22, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

ANTHONY EDWARD STARK

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Anthony Stark, applied for the Canada Emergency Response Benefit [CERB] and received payments for five four-week periods in 2020. Approximately two years later, Mr. Stark learned that he was found ineligible for CERB and therefore now required to repay the money he received. The Canada Revenue Agency [CRA] found him ineligible because

there was insufficient evidence of earnings of at least \$5,000 in income in 2019 or the 12 months before the date of his first application (“Income Eligibility Requirement.”)

[2] Mr. Stark is challenging this ineligibility determination on judicial review. He raises a number of arguments. In my view, the key issue is the Officer’s failure to address the evidence and explanations Mr. Stark provided. I find this failure to engage with Mr. Stark’s submissions and evidence renders the decision unreasonable. I will not make the eligibility determination myself as was requested by Mr. Stark. As I explain below, I find sending the matter back to be redetermined, with the ability of Mr. Stark to provide further evidence or submissions, to be the most appropriate remedy in these circumstances.

II. Preliminary Issues

[3] Two preliminary issues were raised at the outset of the hearing. First, Mr. Stark asked that his mental health advocate, Matthew Foxall, make submissions on his behalf. Mr. Foxall is not a lawyer. The Respondent did not object to Mr. Foxall making submissions. In these circumstances, I found it appropriate to waive the requirement in Rule 119(1) of the *Federal Courts Rules* (SOR/98-106) [*Rules*] that only lawyers are able to make representations on behalf of individuals appearing before the Court.

[4] Second, at the request of the Respondent, and in accordance with Rule 303 of the *Rules*, the style of cause shall be amended to name the Attorney General of Canada as the Respondent in this application.

III. Procedural History

[5] During the relevant time period, Mr. Stark operated a small business where he provided officiant, planning and disc jockey services for weddings. His business was impacted by the restrictions imposed in response to the COVID-19 pandemic. Mr. Stark applied for CERB for four four-week periods from March 15, 2020 to July 4, 2020 and for one four-week period from August 30, 2020 to September 26, 2020, and received payments during this time.

[6] Mr. Stark first learned that the CRA had concerns that he was ineligible for CERB in June 2022. He was given an opportunity to provide submissions to establish his eligibility. Mr. Stark provided submissions and evidence in the form of business invoices. In August 2022, Mr. Stark was informed that the CRA would be assessing his eligibility through a formal review. Mr. Stark again provided further information, including screenshots of Interac e-transfers. At the time of the first review, Mr. Stark's 2019 tax returns indicated that his self-employment income was \$674.24. Mr. Stark was found ineligible because he did not meet the Income Eligibility Requirement.

[7] Mr. Stark requested a second review of the ineligibility determination. Prior to the second review, Mr. Stark re-filed his 2019 taxes and the reassessment reflected that he had roughly \$5,500 of eligible earnings in 2019. The evidence before the CRA Officer conducting the second review ("Second Review Officer") included the following: small business registration document, proof of business insurance, screenshots of the business's website, sample of vows created for a wedding performed, photo of wedding performed, detailed invoices and service contracts

totalling in the amount of \$7,062.50 for the relevant period, screenshots of e-transfers totalling in the amount of \$2,742.50, a document confirming the Applicant's legal name change in September 2019, copy of a wedding ceremony performed, mailing address labels, master business license, and a business card with a consultation template on the back.

[8] Mr. Stark spoke to the Second Review Officer on May 24, 2023. The Second Review Officer asked whether Mr. Stark had any bank statements confirming the amounts in the invoices. Mr. Stark explained that because of his legal name change in 2019, he no longer was able to obtain the documents from his bank. Mr. Stark explained that he would only be able to obtain these bank statements with a court order. The Second Review Officer asked for other documents related to his business. Mr. Stark provided the business registration and the photos from the website. On May 29, 2023, the Second Review Officer had a further call with Mr. Stark where the officer advised that they were only able to correlate roughly \$1,200 of the income claimed between the Interac e-transfers and the invoices. Again, the Second Review Officer asked for bank statements and Mr. Stark explained that he was still unable to get his bank statements. He also explained that he had provided all the documents he had related to the work he performed in the relevant period.

[9] On June 8, 2023, Mr. Stark was notified that the Second Review Officer had also found him ineligible for not meeting the Income Eligibility Requirement. The CRA found that they were only "able to validate \$1,687.50 of eligible earnings" and Mr. Stark was "unable to provide any additional documentation to support their self employed income from 2019" and therefore

“it is impossible to tell whether... [Mr. Stark] had the required \$5,000 of net self employed income.”

IV. Analysis

[10] In 2020 CERB was available for eligible employees and self-employed workers who had suffered a loss of income due to the COVID-19 pandemic. The eligibility requirement at issue is the Income Eligibility Requirement set out in paragraph two of the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 requiring an applicant to demonstrate that they had at least \$5,000 in income in 2019 or in the 12 months before the date of their first application.

[11] While I agree with the Respondent that this Court has repeatedly held that declaring income for the purpose of a tax assessment is not conclusive proof of income (*Aryan v Canada (Attorney General)*, 2022 FC 139 at para 35), Mr. Stark also provided detailed invoices and service contracts. The Second Review Officer did not explain why these documents, in addition to the various materials submitted establishing that he operated a business in the relevant period, were insufficient to demonstrate that he met the Income Eligibility Requirement. One of the ways that the CRA guidelines “Confirming CERB, CRB, CRSB and CRCB Eligibility” [CERB Guidelines] state that a self-employed applicant may be able to show acceptable proof of income to meet the Income Eligibility Requirement is detailed invoices for services rendered. The Officer fails to explain any concern with the invoices Mr. Stark provided. As this Court found in *Crook v Canada (Attorney General)*, 2022 FC 1670 [*Crook*] at paragraph 17, *Sjogren v Canada (Attorney General)*, 2022 FC 951 at paragraph 28, and *Moncado v Canada (Attorney General)*,

2023 FC 114 at paragraph 12, lack of justification for rejecting a form of proof contemplated by the CERB Guidelines can render a decision unreasonable.

[12] Further, the Second Review Officer did not address Mr. Stark's explanation for why he could not access his bank records for 2019. Mr. Stark explained that he had legally changed his name and that his bank refused to provide him with the requested documents without a court order. The Second Review Officer did not address this explanation; the explanation is simply noted and nothing more. Given that the failure to provide bank records was a key basis that grounded the determination that Mr. Stark was ineligible for benefits, the Second Review Officer had to grapple with the explanation provided by Mr. Stark (see *Crook* at para 26; *Bishop v Canada (Attorney General)*, 2023 FC 755 at para 13).

V. Remedy

[13] Mr. Stark asks this Court to determine his eligibility for the CERB and not send it back for redetermination. The Court's power of indirect substitution is exceptional and only used where sending the case back for redetermination would be pointless, or where there is only one possible outcome (*Canada (Citizenship and Immigration) v Tennant*, 2019 FCA 206 at paras 79–82; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 142). Neither of these circumstances apply here.

[14] On redetermination, a different decision maker will have to consider Mr. Stark's eligibility based on the evidence and submissions already provided as well as any further documentation or submissions Mr. Stark would like to make to demonstrate his eligibility.

[15] Rule 400 of the *Rules* affords this Court with full discretionary power over costs. Having considered the factors in awarding costs enumerated in Rule 400(3), I do not find this to be an appropriate case to award costs.

JUDGMENT in T-1282-23

THIS COURT'S JUDGMENT is that:

1. With immediate effect, the style of cause shall be amended to name the Attorney General of Canada as the Respondent in this application;
2. The application for judicial review is granted;
3. The matter is referred back for redetermination by a different decision maker;
4. The Applicant will be given an opportunity to make further submissions and provide additional documentation on redetermination; and
5. No costs are awarded to either party.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1282-23

STYLE OF CAUSE: ANTHONY EDWARD STARK v THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 27, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: MARCH 22, 2024

APPEARANCES:

Matthew Foxall

FOR THE APPLICANT

Ian Pillai

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT